

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
CRIMINAL DOCKET NO.: 5:04CR50**

UNITED STATES OF AMERICA)	
)	
vs.)	
)	ORDER
J. CONCEPCION NUNEZ-BERRERA (2),)	
)	
Defendant.)	
)	

THIS MATTER is before the Court on Defendant's *pro se* Motion for Ineffective Assistance of Counsel and to Appoint Counsel, filed March 14, 2006.

On September 29, 2004, Defendant was charged by way of Bill of Indictment with conspiracy to possess with intent to distribute cocaine, in violation of 21 U.S.C. §§ 841, 846 (Count One), possession with intent to distribute cocaine and aiding and abetting, in violation of 21 U.S.C. § 841 and 18 U.S.C. § 2 (Count Two), and possession of a firearm during and in relation to a drug trafficking crime, in violation of 18 U.S.C. § 924(c) (Count Four). At Defendant's initial appearance on December 20, 2004, United States Magistrate Judge David Keesler appointed Scott H. Gsell, Esq. to represent Defendant. On April 18, 2005, Defendant filed a *pro se* Motion for Appointment of Counsel, contending that the attorney-client relationship between Defendant and Mr. Gsell was no longer viable. On April 28, 2005, Chief United States Magistrate Judge Carl Horn held an inquiry into status of counsel hearing. At the conclusion of this hearing, Magistrate Judge Horn denied Defendant's Motion for Appointment of Counsel. Subsequently, on October 24, 2005, Magistrate Judge Keesler held a second inquiry into status of counsel hearing and at the conclusion of the hearing, Magistrate Judge Keesler

likewise denied Defendant's request for new counsel. Then, on December 5, 2005, Attorney Gsell filed a Motion to Withdraw as Counsel, advising the Court that the professional relationship between Defendant and Mr. Gsell had deteriorated to the point where Mr. Gsell was no longer able to communicate with his client on any issue related to this case. Consequently, on December 5, 2005, Magistrate Judge Horn granted Mr. Gsell's Motion to Withdraw as Counsel, and ordered that a community defender be appointed to represent Defendant.

On January 19, 2006, the Court appointed Donald J. Willey, Esq. to represent Defendant. On February 2, 2006, Defendant filed a *pro se* Motion for Ineffective Assistance of Counsel and Motion to Appoint New Counsel, citing problems with his professional relationship with Mr. Gsell as the basis for the Motion. Subsequently, on March 14, 2006, Defendant filed the instant Motion, citing problems with his relationship with his current attorney, Mr. Willey. Then, on April 17, 2006, the Court received a letter from Defendant, further elaborating on his dissatisfaction with Mr. Willey's representation of Defendant. This matter is scheduled for trial during the Court's May 1, 2006 trial term in the Statesville Division.

The Court will hear these matters when this case comes on for trial during the May 1, 2006 trial term in the Statesville Division. At that time, the parties are expected to be prepared to proceed with trial in this matter if the Court denies Defendant's Motion for Ineffective Assistance of Counsel and Motion to Appoint Counsel. That is, the parties should be prepared to argue the Motion for Ineffective Assistance of Counsel and Motion to Appoint Counsel and to participate fully in Defendant's trial. **The Defendant is advised to cooperate to the fullest extent with his attorney, Donald Willey, to adequately prepare for trial and the other motion.**

IT IS, THEREFORE, ORDERED that Defendant's *pro se* Motion for Ineffective Assistance of Counsel and to Appoint Counsel will be heard at such time as this case is scheduled for trial.

IT IS FURTHER ORDERED that the Clerk shall certify copies of this Order to Defense Counsel, Defendant, the United States Attorney, the Courtroom Deputy Clerk, the United States Marshal Service, and the United States Probation Office.

Signed: April 20, 2006

A handwritten signature in black ink, reading "Richard L. Voorhees", written over a horizontal line.

Richard L. Voorhees
Chief United States District Judge

